

### **REMARKS**

This application has been carefully reviewed in light of the Final Office Action mailed June 28, 2006 ("Office Action"). At the time of the Office Action, Claims 1-26, 28-30 and 32-35 were pending in the application. In the Office Action, the Examiner rejects Claims 1-26, 28-30 and 32-35. To advance prosecution of this case, Applicants amend Claims 1, 5, 9, 12, 13, 18, 21, 24, and 34. Applicants do not admit that any amendments are necessary due to any prior art or any of the Examiner's rejections. Applicants respectfully request reconsideration and allowance of all pending claims.

#### **Section 112 Rejections**

The Examiner rejects Claim 13 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claim 13 is also rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Without admitting the validity of the Examiner's rejection, Applicants submit that Claim 13, as amended, satisfies the requirements of 35 U.S.C. § 112. Accordingly, Applicants respectfully request reconsideration and allowance of amended Claim 13.

#### **Section 103 Rejections**

The Examiner rejects Claims 1-24, 26, 29, 30, 32 and 34 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,356,945 B1 issued to Shaw, et al. ("*Shaw*") in view of U.S. Patent No. 6,894,975 B1 issued to Partyka ("*Partyka*"). Applicants respectfully request reconsideration and allowance of Claims 1-24, 26, 29, 30, 32 and 34.

The cited references fail to support the rejection for at least two reasons. First, the cited references fail to teach, suggest, or disclose each element of amended Claim 1. Second, the *Shaw-Partyka* combination is improper because the proposed combination would render *Shaw* unsatisfactory for its intended purpose.

First, the cited references fail to teach, suggest, or disclose each element of amended Claim 1. In particular, the cited references fail to teach, suggest, or disclose (1) that the "first data packet is associated with a first priority level" and "is transmitted after the

synchronization packet by a first predetermined offset corresponding to the first priority level”; (2) that the “second data packet is associated with a second priority level” and “is transmitted after the synchronization packet by a second predetermined offset corresponding to the second priority level”; and (3) that “the first and second predetermined offsets are usable by the second apparatus to determine the respective priority levels of the respective data packets” as recited in amended Claim 1.

In the Office Action, the Examiner admits that the cited references fail to disclose the foregoing aspects of amended Claim 1. In particular, the Examiner states:

Applicant’s argument regarding Partyka using predetermined offsets to “determine priority” is addressed herein above. Examiner notes, however, that per Applicant’s specification, priority is enumerated as “low, medium and high”, which Examiner notes is different from sequential priority. At the same time, however, Examiner notes that prioritizing data packets “low, medium and high” was well-known at the time of invention by Applicant and would have been obvious to incorporate within the Shaw/Partyka/Marler system for purposes of expediting sensitive data (i.e.: smoke sensor (high priority) vs. motion detector (medium priority)).

(Office Action; p. 12). Thus, the Examiner’s rationale regarding “prioritizing data packets ‘low, medium and high’” is allegedly based on personal knowledge of what was known in the art. Applicants traverse this assertion and respectfully request that the Examiner provide documentary evidence or an affidavit to support the foregoing assertion. 37 CFR § 1.104(d)(2); MPEP § 2144.03(C). In addition, Applicants note the example provided by the Examiner regarding a smoke sensor and a motion detector is not consistent with the language of amended Claim 1. In the Examiner’s example, the “high priority” signal is sent from a smoke sensor, which is a different device than the motion detector that sends the “medium priority” signal. In contrast, the “first data packet” and the “second data packet” recited in amended Claim 1 are both transmitted by “the transceiver” recited in amended Claim 1. Thus, the cited references fail to teach, suggest, or disclose each aspect of amended Claim 1.

Second, the *Shaw-Partyka* combination is improper because the proposed combination would render *Shaw* unsatisfactory for its intended purpose. As explained in Applicants’ Response dated March 30, 2006, modifying *Shaw* in view of *Partyka* would result in a system in which the set-top assembly would be unable to communicate with or

control all of the peripheral devices. In support of this argument, Applicants noted that *Partyka* states that “not all of the nodes can communicate with each other directly; only those nodes that are connected by one of paths 111 through 118 can communicate directly. For example, node 105 cannot communicate with node 101 directly, but only indirectly through other nodes.” (*Partyka*; col. 6, ll. 21-34). In the Office Action, the Examiner argued that this portion of *Partyka* relates to *Partyka*’s description of the prior art and not “the aspects of the *Partyka* invention relied upon.” (Office Action; p. 11). Applicants respectfully disagree. The statement in *Partyka* that “not all of the nodes can communicate with each other directly” describes a characteristic of a particular network topology. This particular network topology is incorporated into the system of *Partyka*, as illustrated in Figure 2. Thus, even in the system of *Partyka*, not all of the nodes are able to communicate with each other directly. As illustrated in Figure 2 of *Partyka*, neighboring nodes (such as N3 and N5) can communicate directly, but other nodes (such as N5 and N1) are unable to communicate directly. Thus, Applicants’ observation that not all of the nodes in *Partyka* can communicate directly is a characteristic of the illustrated embodiments of *Partyka*. For this reason, the Office Action fails to refute Applicants’ observation, discussed in detail in the Response dated March 30, 2006, that the proposed combination would render *Shaw* unsatisfactory for its intended purpose.

Notwithstanding the discussion above showing that not all of the nodes in the system of *Partyka* are able to communicate with each other directly, Applicants remind the Examiner that a prior art reference must be considered in its entirety, including portions that teach away from the proposed combination. See, e.g., *Ecolochem, Inc., v. Southern California Edison Co.*, 227 F.3d 1361, 1372-73, 56 U.S.P.Q.2d 1065 (Fed. Cir. 2000); MPEP § 2141.02. Because the proposed combination would render *Shaw* unsatisfactory for its intended purpose, Applicants respectfully request that the Examiner withdraw the *Shaw-Partyka* combination. For at least the foregoing reasons, Applicants respectfully request reconsideration and allowance of amended Claim 1.

In rejecting Claims 9, 13, and 21, the Examiner employs rationale that is analogous to that used with respect to Claim 1. Accordingly, for reasons analogous to those stated with

respect to amended Claim 1, Applicants respectfully request reconsideration and allowance of amended Claims 9, 13, and 21.

Claims 2-8, 10-12, 14-20, 22-26, 28-30, and 32-35 depend from independent claims shown above to be allowable. In addition, these claims recite further elements not taught, suggested, or disclosed by the cited references. For at least these reasons, Applicants respectfully request reconsideration and allowance of Claims 2-8, 10-12, 14-20, 22-26, 28-30, and 32-35.

**CONCLUSION**

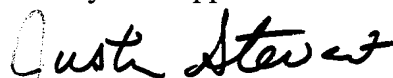
Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicants respectfully request reconsideration and full allowance of all pending claims.

If there are matters that can be discussed by telephone to further the prosecution of this Application, Applicants invite the Examiner to call the undersigned attorney at (214) 953-6755 at the Examiner's convenience.

Applicants believe no fees are due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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